



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF, SS

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage, to keep all or part of the security deposit, for authority to serve documents in an alternate manner, and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlords submitted to the Residential Tenancy Branch on June 10, 2016 were sent to the Tenants, via registered mail, although she cannot recall the date of service. The female Tenant stated that she received these documents in the mail sometime in August of 2016. As the Tenant acknowledged receipt of the evidence it was accepted as evidence for these proceedings.

As the Landlords have been able to serve documents to the Tenants I find there is no need to consider their application for authority to serve documents in an alternate manner.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that the tenancy began in 2014 and that rent of \$1,625.00 was due by the first day of each month.

The female Landlord stated that the Tenants paid a security deposit of \$812.50. The female Tenant stated that the Tenants paid a security deposit of \$825.00. The tenancy agreement indicates a security deposit of \$825.00 was paid.

The female Landlord stated that the Landlords served the Tenant with a One Month Notice to End Tenancy that declared the Tenant must vacate the rental unit by April 30, 2016. The female Tenant acknowledged receiving a Notice to End Tenancy that declared she must vacate the rental unit by April 30, 2016, which the Tenants did not dispute.

The female Tenant stated that the rental unit was vacated on May 17, 2016. The female Landlord is not certain when the unit was vacated, but she believes it was vacated sometime in the middle of May of 2016.

The female Tenant stated that the Tenants paid \$400.00 in rent, by "direct deposit", on May 12, 2016. The female Landlord stated that no rent was paid for May of 2016.

The Landlords are seeking compensation, in the amount of \$6,184.50, for replacing the carpets in the rental unit. In support of this claim the female Landlord stated that:

- the carpets were in good condition at the start of the tenancy;
- the carpets were new in 2007;
- the carpets were badly stained at the end of the tenancy;
- the carpets had a pet odour at the end of the tenancy;
- there was a large burn in the carpet at the end of the tenancy;
- the photographs submitted in evidence accurately reflect the condition of the carpets at the end of the tenancy;
- the carpets have not been replaced;
- the Landlord intends to replace the carpet with laminate flooring;
- she obtained an estimate for replacing the carpet;
- the estimate of \$6,184.50 was for replacing the carpet and painting the unit;
- \$1000.00 of the estimate was for painting and \$5,184.50 was for replacing the flooring with laminate flooring; and
- the person who provided the estimate advised the Landlords that laminate flooring is cheaper than carpet.

In response to the claim for replacing the carpet the female Tenant stated that:

- all of the damage depicted in the Landlords' photographs was caused by the Tenants, with the exception of the stains near the entry;
- at least some of the stains near the entry were caused by the Landlords;
- she has spoken with a well-known home supply store and has been informed that it will cost approximately \$3,200.00 to replace the carpets; and
- she has been advised that it costs more to install laminate flooring than carpet.

The Landlords are seeking compensation, in the amount of \$1,115.81, for removing garbage from the rental unit at the end of the tenancy and for cleaning the unit at the end of the tenancy. In support of this claim the female Landlord stated that:

- the photographs submitted in evidence accurately reflect the condition of the rental unit at the end of the tenancy;
- the Landlords spent approximately 25 hours cleaning the rental unit and disposing of the garbage;
- the disposal receipts of \$36.00 were the costs of disposing of the garbage left in the unit; and
- the four receipts submitted in evidence, which total \$136.12, were for supplies used to clean the rental unit.

In response to the claim for replacing the carpet the female Tenant stated that:

- they did not have sufficient time to clean the unit at the end of the tenancy;
- the photographs submitted in evidence accurately reflect the condition of the rental unit at the end of the tenancy;
- it would have only taken approximately 12 hours to clean the rental unit and dispose of garbage left behind by the Tenants;
- she objects to paying \$3.00 on receipt 11 for scissors;
- she objects to paying \$2.00 on receipt 11 for Advil; and
- she objects to paying \$1.25 on receipt 12 for tissues.

The Landlords are seeking compensation for painting the rental unit. In support of this claim the female Landlord stated that:

- the walls were in good condition at the start of the tenancy;
- the photographs submitted in evidence accurately reflect the condition of the walls at the end of the tenancy;
- the Landlords spent approximately 25 hours repairing and painting the walls; and
- the four receipts submitted in evidence, which total \$140.82, were for supplies used to repair and paint the walls.

In response to the claim for replacing the carpet the female Tenant stated that the majority of damage to the walls depicted by the photographs submitted in evidence occurred while the Tenants were moving their furniture.

The Landlords are seeking compensation of \$108.82 for the cost of travelling to the rental unit to clean and repair it.

The Landlords are seeking compensation of \$59.32 for copying and mailing evidence.

Analysis

On the basis of the undisputed evidence I find that the Landlords served the Tenants with a One Month Notice to End Tenancy that required them to vacate the rental unit by April 30, 2016, and that the Tenants did not dispute that Notice. In the absence of evidence to the contrary I find that this tenancy ended on April 30, 2016 on the basis of a One Month Notice to End Tenancy.

As the Tenants did not vacate the rental unit by April 30, 2016, I find that the Tenants are obligated to pay rent, on a per diem basis, for the days they remained in possession of the rental unit. As the Tenants acknowledge remaining in the unit until May 17, 2016 I find that they must pay rent for the period between May 01, 2016 and May 17, 2016, at a daily rate of \$54.17, which equates to \$920.89.

In adjudicating this matter I have placed little weight on the female Tenant's testimony that \$400.00 in rent was paid on May 15, 2016, as the Tenants submitted no evidence to corroborate that testimony and the Landlords do not acknowledge the payment. When rent is paid by direct transfer, as the Tenants allege in these circumstances, I find that the Tenants bear the burden of proving the payment was made by providing documentation of the payment.

I note that I have not granted the Landlords compensation for the full month of May as the Landlords did not clearly inform the Tenants they were seeking compensation for loss of revenue.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the carpets in good condition at the end of the tenancy. On the basis of the photographs submitted in evidence I find that the carpets are in extremely poor condition and need to be replaced.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpets were new in 2007 and were, therefore, approximately nine years old when this tenancy ended. I therefore find that the carpet

has depreciated by 90% and that the Landlord is entitled to 10% of the \$5,184.50 estimate for replacing the floor, which is \$518.45.

In adjudicating the claim for replacing the carpet I have placed no weight on the Tenants' argument that it is cheaper to install carpet than laminate flooring, as they have submitted no evidence to support the female Tenant's testimony in that regard.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition at the end of the tenancy. On the basis of the photographs submitted in evidence I find the female Landlord's testimony that the Landlords spent approximately 25 hours cleaning the unit is credible and I find that the Landlords' are entitled to compensation for the time they spent cleaning. I find that they are entitled to compensation at an hourly rate of \$20.00, which I find to be reasonable for labour of this nature, and I grant them \$500.00 in compensation for time spent cleaning the unit.

On the basis of the receipts submitted in evidence and in the absence of evidence to the contrary, I find that the Landlords spent \$173.56 for cleaning supplies and I find that they are entitled to compensation for these costs. This is the total of the four cleaning receipts submitted in evidence, less the \$6.25 the Tenant pointed out were purchases that are not directly related to cleaning.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the walls that were significantly damaged during the tenancy. In the absence of evidence to the contrary I accept the female Landlord's testimony that the Landlords spent approximately 25 hours repairing and painting the walls and I find that the Landlords' are entitled to compensation for that time. I find that they are entitled to compensation at an hourly rate of \$20.00, which I find to be reasonable for labour of this nature, and I grant them \$500.00 in compensation for time spent repairing and painting the walls.

On the basis of the receipts submitted in evidence and in the absence of evidence to the contrary, I find that the Landlords spent \$140.82 for repair and painting supplies and I find that they are entitled to compensation for these costs. I note that the Tenant has not raised any concerns regarding the receipts submitted in evidence in support of this claim.

I find that the Landlords are not entitled to the cost of travelling to the rental unit for the purposes of cleaning and repairing the rental unit, as the Tenants cannot be held responsible for costs associated to the Landlords' decision to operate a business that is not in close proximity to their residence.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I

therefore dismiss the claim for mailing and copying costs, as those are not costs that are contemplated by the *Act*.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$2,853.72, which includes \$920.89 in rent for May of 2016; \$518.45 to replace the carpet; \$500.00 for time spent cleaning the unit; \$173.56 for cleaning supplies; \$500.00 for time spent repairing and painting the walls; \$140.82 for supplies for repairing and painting the walls; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain the Tenants' security deposit of \$825.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance \$2,028.720. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 30, 2016

Residential Tenancy Branch